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UNITED NATIONS DECADE OF INTERNATIONAL LAW

Note by the Secretariat

Contents

		Paragraphs	Page
INTRODUCTION		1-2	2
I.	ACTION ON THE DECADE BY THE COMMISSION	3-7	2
II.	ACTION ON THE DECADE AT THE FORTY-FIFTH SESSION OF THE GENERAL ASSEMBLY	8-14	3
III.	PROPOSED CONGRESS ON INTERNATIONAL TRADE LAW	15-24	5
	A. Background	15-18	5
	B. Organization of the Congress	19-24	7

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INTRODUCTION

1. The General Assembly, by its resolution 44/23 of 17 November 1989, declared the period 1990 to 1999 as the United Nations Decade of International Law.

2. In that resolution, the General Assembly requested the Secretary-General to seek the views of Member States and of appropriate international bodies, as well as of non-governmental organizations working in the field, on the programme for the Decade and on the appropriate action to be taken during the Decade. It further decided that at its forty-fifth session it would consider in a Working Group of the Sixth Committee the question of the programme for the Decade and of appropriate action to be taken during the Decade with a view to preparing generally acceptable recommendations for the Decade.

I. ACTION ON THE DECADE BY THE COMMISSION

3. The resolution was brought to the attention of the Commission at its twenty-third session in 1990 in a note by the Secretariat (A/CN.9/338). At the session the Commission discussed the implications of the Decade for its future work. 1/ The conclusions of the Commission, which are summarized in paragraphs 4 to 7, were submitted to the forty-fifth session of the General Assembly along with views of Governments and of other international organs and organizations (A/45/430 and Corr. 1 and Add. 1 and 2).

4. At its twenty-third session the Commission observed that the programme for the Decade should take account of the fact that international trade law was an important and integral part of international law; in particular, the Commission's work was an important element in strengthening the rule of law in international economic relations.

5. The discussion in the Commission concentrated on how the Commission itself might take the occasion of the Decade to further strengthen and develop its programme of work. Several types of activities were identified in the discussion as being particularly appropriate for inclusion in the programme for the Decade. One activity was to strengthen the teaching, study, dissemination and wider appreciation of the law of international trade. Another activity was the promotion of acceptance of legal texts emanating from the work of the Commission and from the work of other intergovernmental and non-governmental organizations active in the area of international trade law. The observation was made that in respect of international law in general, and international trade law in particular, the wider adoption and effective implementation of existing texts was often of greater value than was the elaboration of new texts. The Commission noted that its activities in respect of the teaching, study, dissemination and wider appreciation of international trade law, with the associated promotion of the adoption and use of existing texts, had been more limited than was desirable because of the limited resources that had been available for them.

1/ Report of the United Nations Commission on International Trade Law on the work of its twenty-third session, Official Records of the General Assembly, Forty-fifth Session, Supplement No. 17 (A/45/17), paras. 70-74.

6. The Commission noted that the suggested activities relating to the teaching, study, dissemination, wider appreciation and promotion of international trade law would have their impact in all regions, but that they would be of greatest significance in developing countries. In the same spirit, a suggestion was made that an attempt should be made to find a way to finance the travel of experts from developing countries, and especially from States members of the Commission, to the sessions of the Commission and its working groups so that those States would be in a better position to contribute actively to the creation of international trade law. 2/

7. In respect of the future activities of the Commission in the preparation of legal texts, it was suggested that the Commission could contribute to the Decade by undertaking work on a subject that was of underlying fundamental significance for the further development of the law of international trade, such as the formulation of general principles of contract law or of general principles in particular areas of international trade law. It was also suggested that the Secretariat might review the proposals made in past years for the programme of work that had not been acted upon, as well as subjects on which work had begun but had been terminated prior to the adoption of a legal text, to determine whether some of those items might now be appropriate for the current programme of work. Under one suggestion the Secretariat would be requested to prepare a proposed programme of work for the Commission for the period of the Decade. Furthermore, it was suggested that the preparatory work by the Secretariat relating to the Decade should address the question of the harmonization between the universal and the regional codification of international trade law. It was proposed that one plenary session of the Commission should be dedicated to a review of developments in the field of international trade law from 1980 onward.

II. ACTION ON THE DECADE AT THE FORTY-FIFTH SESSION OF THE GENERAL ASSEMBLY

8. During the forty-fifth session of the General Assembly the Sixth Committee created the working group on the Decade that had been anticipated in resolution 44/23. The views of Governments and international organizations that had been transmitted to the Secretary-General and placed before the forty-fifth session of the General Assembly were listed in systematic order in

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2/ In paragraph 5 of resolution 45/42 of 28 November 1990 on the report of the twenty-third session of the Commission, the General Assembly

> "Requests the Secretary-General, in consultation with the Commission's secretariat, to prepare a report with a view to analysing possible ways by which assistance could be given to developing countries that are members of the Commission, in particular least developed countries, so that they may attend meetings of the Commission and its working groups, bearing in mind the arrangements that exist for United Nations bodies generally, pursuant to resolution 43/217, section IX, of 21 December 1988, and to submit it to the General Assembly at its forty-sixth session;".

The report requested by the General Assembly will be submitted to its forty-sixth session.

Annex II of the report of the working group entitled a "Comprehensive list of suggestions with respect to the programme for the United Nations Decade of International Law proposed by States and international organizations" (A/C.6/45/L.5). Annex I of the report sets forth a "Draft programme for the activities to be commenced during the first term (1990-1992) of the United Nations Decade of International Law" based on those suggestions.

9. While most of the suggestions submitted by Governments and international organizations that are not included in the draft programme of activities, as well as the activities listed in the draft programme, relate to public international law, several of the suggestions are of particular interest to the work of the Commission. Among the suggestions listed in the category "Promotion of the acceptance of and respect for international law" that are of particular importance for the effective incorporation of legal norms prepared at the international level into national legal systems were

> "3. Provision of technical and financial assistance to States in their implementation of treaties, including the drafting of national legislation
>
> "4. Recommendations for more effective ways to apply international law at the national level
>
> (i) Application of international law (including by municipal courts) as laws of the land
>
> (ii) Comparative studies on the subject".

10. A suggestion of particular relevance to the Commission was listed in the category "Encouragement of the progressive development of international law and its codification", namely

> "4. Clearer definition of the role of the International Law Commission and the United Nations Commission on International Trade Law (UNCITRAL)".

11. The "Programme for the activities to be commenced during the first term (1990-1992) of the United Nations Decade of International Law" was adopted by the General Assembly in its resolution 45/40 of 28 November 1990, on the basis of a draft resolution prepared by the Sixth Committee that incorporated the draft programme of activities contained in the report of the Working Group. The programme of activities is grouped under four substantive headings, which are in turn the main purposes of the Decade according to resolution 44/23, that is

> I. Promotion of the acceptance of and respect for the principles of international law
>
> II. Promotion of means and methods for the peaceful settlement of disputes between States, including resort to and full respect for the International Court of Justice
>
> III. Encouragement of the progressive development of international law and its codification
>
> IV. Encouragement of the teaching, study, disseminationa and wider appreciation of international law.

12. Among the four purposes of the Decade, the two of greatest interest for the Commission are the "encouragement of the progressive development of international law and its codification" and the "encouragement of the teaching, study, dissemination and wider appreciation of international law". The suggested activities for the United Nations organs and organizations in implementation of those two purposes as described in the programme are similar to the suggestions made at the twenty-third session of the Commission and summarized in paragraphs 4 to 7.

13. A fifth heading in the programme adopted by the General Assembly was entitled "Procedures and organizational aspects" in which, among other matters, the Sixth Committee was requested to continue to prepare the programme of activities for the Decade. Of more direct relevance to the Commission is paragraph 4 of the resolution itself, in which the General Assembly

> "Invites all international organizations and institutions referred to in the programme to undertake the relevant activities outlined therein and, as appropriate, to submit to the Secretary-General interim or final reports for transmission to the General Assembly at the forty-sixth session or, at the latest, the forty-seventh session;".

14. This short review of the principal actions taken by the General Assembly in respect of the Decade shows that the Assembly anticipates that the initiative for implementation of the programme will rest in large measure with the various international organs and organizations interested in international law. As a result the Commission may wish to respond to the invitation of the General Assembly contained in resolution 45/40 by preparing a programme of activities for the Decade that is specifically related to international trade law. The Commission may wish to consider that, as a first step in the preparation of such a programme, it might organize a Congress on International Trade Law to be held in the context of the twenty-fifth session of the Commission in 1992.

III. PROPOSED CONGRESS ON INTERNATIONAL TRADE LAW

A. Background

15. The declaration of the United Nations Decade of International Law comes at a fortunate moment in the history of the Commission. The Commission is completing a quarter century of existence, having been created by the General Assembly on 17 December 1966 by adoption of resolution 2205 (XXI). In 1992 the Commission will celebrate its twenty-fifth session. It would seem, therefore, appropriate for the Commission to commence its activities in respect of the Decade by considering in a comprehensive manner the current state of international trade law and the needs in this field for the next quarter century. Undertaking such a comprehensive review at this time could be expected to serve a function similar to that served by the "Schmitthoff report" to the General Assembly in 1966. 3/

3/ Official Records of the General Assembly, Twenty-first Session, Annexes, (A/6396), reprinted in UNCITRAL Yearbook, Vol. I: 1968-1970, Part One, II, B.

16. In order to determine whether the United Nations should engage in the progressive unification and harmonization of international trade law, and whether it should create a new commission for that purpose, the General Assembly in its resolution 2102 (XX) of 20 December 1965 requested the Secretary-General to submit to the General Assembly at its twenty-first session a comprehensive report including:

(a) A survey of the work in the field of unification and harmonization of the law of international trade;

(b) An analysis of the methods and approaches suitable for the unification and harmonization of the various topics, including the question whether particular topics were suitable for regional, inter-regional or worldwide action;

(c) Consideration of the United Nations organs and other agencies which might be given responsibilities with a view to furthering co-operation in the development of the law of international trade and to promoting its progressive unification and harmonization.

17. The report of the Secretary-General (A/6396), sometimes referred to as the "Schmitthoff report" in reference to the late Professor Clive M. Schmitthoff who was its principal author in the capacity of a consultant to the Secretariat, was a comprehensive document completely fulfil'ing the expectations of the General Assembly. The report adequately answered the question as to whether a new commission on international trade law should be created. The report did much more; it furnished the intellectual foundation upon which the Commission undertook the task of preparing its first programme of work and deciding how that programme of work would be co-ordinated with the activities of other organizations. 4/ Even today, twenty-five years after its preparation, the Schmitthoff report furnishes a useful discussion of the methods, approaches and topics that are suitable for the progressive harmonization and unification of the law of international trade and a useful compendium of the organizations active in the field. 5/

18. Nevertheless, events have made much of what was said in the Schmitthoff report out of date. Not the least of these events is the success of the Commission itself. For example, paragraph 30 of the report includes a short description of the Convention relating to a Uniform Law on the International Sale of Goods and of the Convention relating to a Uniform Law on the Formation of Contracts for the International Sale of Goods, both of which had been concluded at the Diplomatic Conference on the Unification of Law governing the International Sale of Goods at The Hague in April 1964 and opened for signature on 1 July 1964. The report noted that of the twenty-seven States that signed the Final Act of the Conference, all but three

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4/ The report was distributed to the first session of the Commission and the definition of international trade law contained therein is specifically referred to in the report of the first session (A/7216, paras. 23 and 24). Although the Commission agreed that it was not essential to formulate a definition of international trade law at that time, and has never done so since, the definition referred to has served as a touchstone for the Commission's programme of work.

5/ The list of organizations active in the field of international trade law was brought up to date in 1988 in A/CN.9/303.

were countries of free enterprise economy and that geographically twenty-two were located in Europe, three in Latin America and North America and two in Asia. While the two Hague Conventions came into force with, at their high point, nine and eight States parties respectively, thirty-one States from all five continents are currently parties to its successor, the United Nations Convention on Contracts for the International Sale of Goods. 6/

B. Organization of the Congress

19. In order to undertake such a comprehensive review of the current state of international trade law and the needs in this field for the next quarter century, it is suggested that one week of the twenty-fifth session of the Commission, which will be held in New York in 1992, should be devoted to the holding of a Congress on International Trade Law. Such a Congress would respond to the suggestion made at the twenty-third session of the Commission that the Commission might devote one plenary session to a review of developments in the field of international trade law from 1980 onward (see para. 7). The Congress would be organized as an integral part of the Commission session. As a result, full conference servicing would be available at no extra cost to the Organization.

20. The Congress might be organized around the themes presented in the Schmitthoff report as well as include new themes that have arisen during the past twenty-five years, such as how to secure effective incorporation of texts of international trade law into the domestic legal systems and the teaching of international trade law in universities. Speakers might include both individuals currently or formerly associated with the Commission and individuals not associated with the Commission but who have particular expertise. Time might be allocated for discussion of individual papers and topics.

21. Since the Congress would be an integral part of the twenty-fifth session of the Commission, all States and all interested international organizations would automatically be invited to attend. It could be expected that more States and interested organizations than normal would attend and that individual delegations might be larger than normal.

22. The Congress would be of a nature that specialists in international trade law who were not associated with a delegation would be interested in attending. The Commission might wish to consider whether it would be interested in inviting such specialists to attend the Congress. In anticipation of such a possibility, an adequate meeting room has been reserved for the week.

23. Because the Congress would take place within the context of the Commission session, it would not be possible to charge a fee for attending the Congress even to those participants who were not associated with a delegation. However, because of the limited space available, it would be necessary to call for advance registration. Furthermore, any participants at

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6/ The two Hague Conventions have been denounced by three States, i.e., Germany, Italy and Netherlands, when they adhered to the United Nations Convention on Contracts for the International Sale of Goods.

the Congress not associated with a delegation could be invited to make a contribution to the UNCITRAL Symposium Trust Fund. Since a contribution would be voluntary, the amount would also be voluntary. However, an appropriate amount might be suggested.

24. The papers presented by the speakers might subsequently be published in a bound form. In anticipation of such a possibility, the programme budget for 1992-1993 submitted by the Commission's Secretariat provides for publication in English, French and Spanish of the papers to be presented to the Congress.